

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NOTICE OF BELL SOUTH)	
TELECOMMUNICATIONS, INC. TO)	CASE NO.
DISCONNECT TELSON COMMUNICATIONS,)	2004-00400
INC. FOR NON-PAYMENT)	

O R D E R

On September 30, 2004, BellSouth Telecommunications, Inc. ("BellSouth") provided written notice to the Commission of its intent to disconnect Telson Communications, Inc. ("Telson") for nonpayment of bills. BellSouth asserts the unpaid amount is \$2,420,687.47, of which \$119,611.18 is for services provided in Kentucky. BellSouth plans to discontinue services to Telson if payments are not received. Disconnection of Telson services will impact approximately 508 Kentucky customers.

BellSouth requests authorization to invoke the Emergency Service Continuity Tariff approved by this Commission on May 20, 2003 in Case No. 2002-00310.¹ Invoking this tariff is necessary only if Telson has not notified its end-users of the service disconnection. If the Emergency Service Continuity Tariff is invoked, BellSouth will continue to provide telephone service to Telson's customers for a minimum of 14 days after Telson ceases to operate.

¹ Case No. 2003-00310, Customer Billing and Notice Requirements for Wireline Telecommunications Carriers Providing Service in Kentucky.

The Commission, having reviewed BellSouth's notice and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. Telson shall notify the Commission within 7 calendar days of the date of this Order of its intent to pay the delinquent bill to BellSouth within 10 days of the date of this Order or, in the alternative, of its intent to notify its end-users of the proposed service disconnection. Such written comments shall include a copy of Telson's customer notice and an affidavit indicating when the notice was mailed and the number of Kentucky customers to whom it was mailed.

2. A copy of BellSouth's notice of intent to disconnect Telson is attached hereto and incorporated herein.

3. A copy of a letter from Gordon Polozola, attorney for Telson, received by the Commission on September 24, 2004 is attached hereto and incorporated herein.

4. If Telson has not responded as prescribed in Ordering Paragraph 1 within 7 calendar days of the date of this Order, BellSouth shall implement the procedures established in its Emergency Service Continuity Tariff.


5. A copy of this Order shall be sent by certified mail to Telson.

Done at Frankfort, Kentucky, this 28th day of October, 2004.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Executive Director

2004-00400



BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 410
Louisville, KY 40203

Joan.Coleman@bellsouth.com
jcoleman6@imcingular.com

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PUBLIC SERVICE
COMMISSION

Joan A. Coleman
Vice President
Regulatory & External Affairs

502-582-2167
Fax 502-582-2140

September 30, 2004

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

Dear Ms. O'Donnell:

Pursuant to the Kentucky PSC's May 20, 2003 order in KY PSC Case No. 2002-0310, BellSouth is providing advance notice to the Kentucky Public Service Commission (PSC) of BellSouth's intent to disconnect Telson Communications, Inc. ("Telson") for non-payment.

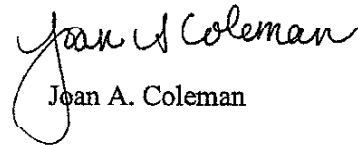
BellSouth's records indicate that Telson is delinquent in payment of its bills to BellSouth in the amount of \$2,420,687.47. Of this amount, \$119,611.18 is overdue for services provided in Kentucky to Telson. Attempts to collect past due amounts from Telson have been unsuccessful. BellSouth made numerous written notifications to Telson informing them of BellSouth's intent to suspend or terminate services consistent with the terms and conditions of the Resale Agreement between Telson and BellSouth. Attached is BellSouth's last written notice to Telson. On or about October 16, 2004, BellSouth will begin to discontinue services provided to Telson if payments are not received by October 15, 2004. Disconnection of Telson services will affect approximately 508 of its Kentucky customers.

Under terms of their Resale Agreement, Telson is solely responsible for notifying its end users of the proposed service disconnection. BellSouth is copying Telson to remind them of their obligation to notify their end users of this situation regarding pending disconnection of services.

Should the Commission determine the need to invoke BellSouth's Emergency Service Continuity Tariff, BellSouth will take steps to notify the affected end users and inform them that they may continue to receive telecommunications services through The Emergency Services Continuity Plan for a minimum of fourteen (14) days and that the end user must transition to a new service provider.

Should you or the staff have any questions concerning this filing or need additional information, Mike Hayden, of my staff, is familiar with this matter and can be reached on (502) 582-8180.

Very truly yours,


Joan A. Coleman

cc: Telson Communications, Inc.
Attn: Dr. Samuel W. Mitcham, Jr.

Mr. Gordon D. Polozola

Attachment



BellSouth Accounts Receivable Management, Inc.
Wholesale
1 Chase Corporate Drive
Suite 800
Birmingham, AL 35244

Gary D. Patterson
Operations Assistant Vice President

September 27, 2004

Mr. Gordon D. Polozola
KeanMiller, LLP
22nd Floor
One American Place
Post Office Box 3513
Baton Rouge, Louisiana 35244

RE: Telson Communications/BellSouth Billing Disputes File No.: 15460-2

Dear Mr. Polozola:

This letter is in response to your September 21, 2004 letter, whereby you have indicated Telson does not owe BellSouth any of the \$2.6 million previously in dispute. Your letter covers an extended time frame and characterizes BellSouth as non-responsive. Since October 2002, BellSouth has repeatedly provided detailed information regarding the basis of BellSouth's denial of the Telson disputes. BellSouth has also provided Telson with a description of the additional information needed from Telson if it continued to assert that the items required further review. As stated in my letter of September 8, 2004, BellSouth has made two trips to meet with Telson at their office in Louisiana during what was a continuous and ongoing effort to help Telson understand the issues. In addition, BellSouth has initiated numerous conference calls to work through the issues as well as offered to have weekly or even daily conference calls. Telson has declined to participate, although you graciously offered to meet weekly and pass on our questions to them. I am sure you will agree that the most expeditious way to handle this issue is to have direct dialogue between the people actually working the issues. It has reached the point that Telson has refused to return phone calls for the last three months.

BellSouth has investigated the claims made by Telson and has credited Telson \$154,964.24. The rest of the claims are invalid. Telson's non-responsiveness leaves BellSouth with no other alternative but to stand by BellSouth's billing. BellSouth has no evidence that the billing to Telson is anything but accurate and complete. The \$2.6 million claim has been escalated to the top of the escalation chain at BellSouth and again rejected in my September 8, 2004 letter. BellSouth is prepared to defend its billing before any regulatory agency should Telson pursue such a course of action.

Telson's total past due amount as of today September 27, 2004, is \$2,420,687.47. BellSouth must receive \$2,420,687.47 by the close of business on September 30, 2004, or we will be forced to interrupt Telson's ordering ability. Further, if your payment of \$2,420,687.47 plus any additional charges that may have become past due is not received by October 15, 2004, BellSouth will proceed with denial of service to your end users.

Sincerely,

cc: Mary Jo Peed
Alabama Public Service Commission
Kentucky Public Service Commission
Mississippi Public Service Commission
Louisiana Public Service Commission

KEANMILLER

KEAN MILLER HAWTHORNE D'ARMOND McCOWAN & JARMAN LLP
ATTORNEYS AT LAW

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RECEIVED

SEP 24 2004

September 21, 2004

FINANCIAL ANALYSIS

RECEIVED

SEP 24 2004

PUBLIC SERVICE
COMMISSION

Mr. Gary D. Patterson
BellSouth Accounts Receivable Management
1 Chase Corporate Drive, Suite 300
Birmingham, AL 35244

RE: TelSon Communications/BellSouth Billing Dispute
File No.: 15460-2

Dear Mr. Patterson:

TelSon Communications is in receipt of your letter dated September 8, 2004. It is unfortunate that the parties have not been able to resolve this matter to date. TelSon has devoted an enormous amount of time and effort to investigate, process and resolve the billing disputes, including hiring new personnel devoted exclusively to this matter. More unfortunate, however, is that this matter was practically unmanageable from the start due to BellSouth's inexcusable delay in processing and responding to nearly two years of billing disputes submitted by TelSon.

TelSon began submitting billing disputes to BellSouth in January of 2001, gathering and providing the required information to BellSouth using the BAR Form approved for billing disputes, along with attaching supporting information by spreadsheet. Nevertheless, on more than one occasion, TelSon was forced to resubmit billing dispute information that BellSouth misplaced or never entered into its billing dispute tracking system.

Not until October 24, 2002 did BellSouth respond to 99 outstanding billing disputes submitted by TelSon, which amounted to approximately \$1.2 million. Even then, BellSouth summarily denied the disputes, categorizing them into "basically two categories," despite the numerous types of disputes, and providing a scant explanation about the basis for their denial. BellSouth disregarded the sixty-day billing dispute resolution period as set forth in the parties' Interconnection Agreement. If BellSouth would have adhered to such period, it would have prevented such an unmanageable amount of billing disputes at the outset, and possibly would have allowed BellSouth to respond in more detail to the numerous types of disputes submitted by TelSon – rather than offer a summary denial to get rid of the disputes. Moreover, a timely

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BATON ROUGE NEW ORLEANS LAKE CHARLES PLAQUEMINE

response from BellSouth may also have provided TelSon with information allowing it to correct any errors it may have been making.

In response to BellSouth's summary denial of almost two years of disputes, TelSon sent a written request, dated November 27, 2002, to Mr. Jamey Mahon, the Manager of Resale Billing Disputes for BellSouth, requesting escalation of the disputes in accordance with the parties' Interconnection Agreement. On December 10, 2002, Mr. Mahon responded by e-mail stating "Typically, an escalation includes additional details about the dispute that were not included in the original submission. We would be happy to consider any new information regarding these claims." This amounted to a denial of TelSon's request for escalation - completely inconsistent with the procedure set forth in the Interconnection Agreement, and outrageous considering that part of the reason for the escalation request was to shed light not only on the delay in processing TelSon's billing disputes, but also the lack of adequate explanation and basis for denying the billing disputes. It was not new information that was needed, but a timely review of the disputes by BellSouth and a detailed basis for any denial of disputes. Accordingly, on December 13, 2002, TelSon responded to Mr. Mahon's e-mail again requesting escalation of the billing disputes.

While TelSon was attempting to escalate billing disputes number 1 through 99, TelSon was again forced to resubmit other billing disputes that had been submitted to BellSouth, which disputes numbered from number 150 to 357. TelSon began working with Pat Poe of BellSouth in an effort to have its disputes escalated and resolved. TelSon was shocked to discover that many of its billing disputes had not been reviewed on the merits at all, but rejected due to "lack of information." This was despite TelSon's use of the BAR Form required by BellSouth and TelSon's providing of detail down to the page number of the BellSouth invoice in relation to the supporting information. BellSouth still refused to escalate the billing disputes, and instead stated it would "reload" the billing disputes reviewed by Mr. Mahon.

Also interesting is that shortly after the request for escalation of the billing disputes, TelSon received a letter, dated June 18, 2003, from Mr. Larry Thaxton, Credit Manager for BellSouth, demanding an additional security deposit of \$265,000 "to prevent any disruption of service." By letter dated July 11, 2003, and again by e-mail on July 17, 2003, TelSon informed Mr. Thaxton that it was in the middle of escalating disputes for overcharges by BellSouth, that it was working with BellSouth in an effort to determine an accurate monthly billing for TelSon, and that any deposit based upon the disputed monthly billing would be improper at this time. TelSon requested that BellSouth acknowledge that it would not disrupt service to TelSon and its customers in light of the circumstances, which BellSouth refused to do.

At that point, TelSon contacted the Louisiana Public Service Commission and BellSouth's Louisiana counsel in an effort to obtain escalation of the billing disputes and ensure that TelSon's service was not disrupted.

In late July 2003, BellSouth finally assigned Atlanta counsel to this matter. The parties met at TelSon's offices in Monroe on August 21, 2003 to discuss the best procedure for handling and resolving such a large number of billing disputes. The parties exchanged ideas for the procedure and TelSon also provided information regarding the outstanding disputes to BellSouth for review. TelSon proposed categorizing the disputes in hopes of resolving the disputes in groups and determining the amount of disputes outstanding for each category.

On November 14, 2003, and before BellSouth responded to the information provided by TelSon at the August 21, 2003 meeting, BellSouth sent a disconnect notice to TelSon demanding payment of \$1.2 million dollars by December 1, 2003 or additional service to TelSon would be refused. If payment was not received by December 15, 2003, BellSouth threatened disconnection of TelSon's customers' service.

By letter dated November 14, 2003, TelSon notified BellSouth Atlanta counsel of the disconnect notice, indicating that it was still awaiting BellSouth's analysis of the information provided to it at the Monroe meeting, confirming that the disputes had been escalated and also emphasizing TelSon's continued payment of the undisputed amounts invoiced to BellSouth.¹ BellSouth again refused to confirm that it would not disconnect TelSon's service, leaving TelSon with extreme uncertainty as to whether its customers' service would be disrupted.

On December 9, 2003, BellSouth responded with its analysis of the information provided by TelSon at the meeting in Monroe. Counsel for TelSon and BellSouth had regular contact regarding BellSouth's analysis and TelSon's work on calculating the amount of outstanding disputes. TelSon also agreed to increase the amount it paid to BellSouth on a monthly basis to cover what was believed to be the undisputed amount of the bill, despite the uncertainty as to TelSon's correct billing. Nevertheless, BellSouth counsel, by e-mail dated January 28, 2004, once again threatened that BellSouth would begin its procedures to disconnect TelSon. Considering the matter was finally escalated and that the parties just began working on categorizing what amounted to almost three years of billing disputes, this action only served to undermine the parties' efforts.

Nevertheless, as a gesture of good faith, and pending the audit of the billing disputes, TelSon offered, on February 13, 2004, to pay \$100,000 to BellSouth in addition to paying the undisputed amounts each month. BellSouth refused.

The matter was reassigned to another Atlanta counsel in late February 2004. The parties exchanged information as to the amount of disputes outstanding, and formulated a list of issues for resolving the disputes. On April 2, 2004, the parties once again met in Monroe to discuss the best way of handling what now seemed to be a Herculean task. The parties agreed that the best initial step was to ensure the parties were on the same page as to the amount in dispute and that

¹ TelSon again emphasizes here that it has paid BellSouth the undisputed amounts since the inception of the dispute and is currently paying BellSouth approximately \$150,000 per month for wholesale services.

BellSouth had all of the disputes submitted by TelSon loaded in its system. The obvious reason was that TelSon had submitted and resubmitted billing disputes to BellSouth, most of which BellSouth had summarily denied and had listed as "closed" in their system. BellSouth provided the current information it had in its system and TelSon began cross-referencing its disputes with that of BellSouth. As a small company, TelSon had submitted its BAR forms in hard copy; thus, this task was going to take time. But, BellSouth set what was clearly an unattainable expectation – to resolve the *entire* matter before the next billing cycle.

During the time TelSon was working on the audit of the billing disputes, the auditing personnel was contacted by BellSouth personnel, who ridiculed them for "taking so long" and also demanded that TelSon make a very large lump sum payment to BellSouth. First, such contact was not helpful as TelSon's personnel were working as hard and as fast as they could to cross-reference the billing disputes. Second, the auditing personnel were not in a position to make a decision on any lump sum payments to BellSouth. Contrary to BellSouth's assertion that TelSon was unwilling to participate in weekly conference calls, I always made myself available to discuss the progress of the audit, leaving the relevant TelSon personnel free to perform their work without harassment.

Less than three weeks after the April 2 meeting, BellSouth requested that the parties change the then agreed upon process. Rather than processing all the outstanding BAR forms by category and resolve the disputes by grouping, BellSouth requested TelSon cross-reference the disputes by month, and begin submitting those disputes for re-review by BellSouth. TelSon, after spending weeks of time on the initial process, restarted its review using the newly requested process.

On May 11, 2004, TelSon submitted its first set of monthly billing dispute summaries to BellSouth. BellSouth responded on May 21, 2004. Along with its response to the specific disputes, BellSouth claimed that TelSon had not paid or properly submitted BAR forms for invoices of March and April 2004 "therefore causing TelSon to be subject to the disconnection procedures in the interconnection agreement." TelSon personnel were forced off of the audit to gather information on the March and April 2004 invoices. By e-mail dated May 25, 2004, TelSon informed BellSouth (and attached supporting documentation) that not only had TelSon paid all undisputed amounts and submitted its BAR forms via e-mail to BellSouth for the months of March and April 2004, but TelSon has received electronic confirmation from BellSouth as to their receipt. No explanation of the error was ever given by BellSouth.

While TelSon was reviewing BellSouth's response on the initial monthly billing summaries, compiling additional summaries and attempting to document every aspect of payment and disputes for invoices going forward, BellSouth approached TelSon regarding dispensing with the specific review of billing disputes in favor of a global settlement. As the task of reviewing, cross-referencing, and summarizing years of previously submitted BAR

forms was becoming an increasingly daunting task, TelSon certainly welcomed such a process. BellSouth agreed to submit an offer to TelSon by July 13, 2004.

BellSouth submitted its settlement offer for consideration by TelSon on July 13, 2004, giving TelSon until July 23, 2004 to respond. On July 23, 2004, TelSon rejected BellSouth's initial offer, but indicated it was formulating a counter-offer to be submitted to BellSouth by August 3, 2004. TelSon submitted its counter-offer on August 3, 2004, requesting a response from BellSouth on August 16, 2004.

Rather than receiving the *courtesy* of a response from BellSouth on TelSon's offer, which courtesy was certainly extended by TelSon to BellSouth's offer, TelSon received a demand letter from Mr. Thaxton dated August 20, 2004 that TelSon remit an additional security deposit in the amount of \$309,000 to BellSouth by September 9, 2004 "to ensure that your service remains uninterrupted and to avoid the potential for termination of service. TelSon also received your letter of September 8, 2004 demanding payment of \$2.6 million on or before September 23, 2004 or BellSouth would "begin the disconnection process."

Through the history of this dispute, it has become very apparent that BellSouth's "cooperation" would be extended far enough to go through the motions and quickly re-assert that TelSon owed BellSouth for every dispute submitted. In fact, when TelSon tried to obtain information from BellSouth as to what problems occurred in those instances where BellSouth had given TelSon credit on its billing disputes, BellSouth refused to give TelSon that information. BellSouth had generally acknowledged various problems in its billing system and switches. Thus, knowing specific reasons why credits were given or denied could assist TelSon in compiling and categorizing disputes for a more timely resolution. However, BellSouth did not want to share any specifics regarding the problems it was having.

It has also become very apparent that BellSouth wanted to selectively impose provisions in the interconnection agreement on TelSon, while dismissing its own obligations under the interconnection agreement to promptly resolve and escalate the billing disputes. TelSon can only wonder where the parties would be now if BellSouth had only responded promptly to the billing disputes in the first place, rather than sit on them for nearly two years and then summarily dismiss them.

As far as BellSouth's recent demand of \$2.6 million, that figure does not even represent the amount that BellSouth reports is currently owing by TelSon. According to a payment history provided by BellSouth to TelSon, accounts receivable are closer to \$2.1 million (which TelSon disputes). Recall that TelSon has continued to pay as best as it could what it believed was undisputed and owing. Over time, its disputes exceeded the amounts BellSouth reported as owing. TelSon has apparently overpaid BellSouth in relation to the disputes it has submitted.

Also disturbing about BellSouth's \$2.6 million demand is that it contains charges that BellSouth knows are incorrect – specifically, charges for placing a CREX 1 block on customer accounts.² Rather than BellSouth fixing the billing problem, TelSon has been forced to scour its bills to find these incorrect charges and submit BAR forms month after month to BellSouth to obtain a refund. It would be interesting to determine how many carriers unwittingly pay BellSouth for these incorrect charges. After all, BellSouth is demanding them of TelSon in its latest letter even after TelSon has submitted the required BAR form to recover them.

Notably, TelSon provides service in the SBC region and is not having these types of billing disputes. In fact, on numerous occasions, TelSon finds it need not submit a single dispute form and can pay the amount invoiced in full. When TelSon must submit a dispute, it is resolved promptly by SBC and TelSon. That certainly stands in stark contrast to BellSouth.

While BellSouth continues to criticize TelSon for not providing “additional” information to BellSouth regarding the disputes, it is not additional information from TelSon that is needed. BellSouth has freely admitted that it has not reviewed the merits of an untold number of TelSon's billing disputes – rejecting them for “lack of information.” Yet, BellSouth has not attempted to inform TelSon of the information it is supposedly lacking to process those claims. Rather, it chose to throw a summary denial of two years worth of disputes at TelSon and then threaten disconnection unless TelSon could prove where BellSouth is “wrong.” It is unclear to TelSon which disputes BellSouth has actually reviewed and which ones it has not. What is clear is that TelSon has been left bearing the consequences of BellSouth's delay. It is TelSon's position that BellSouth should not be able to collect on any dispute where BellSouth exceeded the sixty-day review period or refused to escalate the dispute. In light of the circumstances, such a finding would resolve this matter very quickly.

As a small company, TelSon may not have the resources to prevent the disconnection of its customers' service due to this billing dispute. But, TelSon certainly intends to shed light on BellSouth's actions in this matter with the Louisiana, Mississippi, Kentucky and Alabama Commissions through this letter and otherwise in hopes that other small carriers are not treated in the same appalling manner.

Sincerely,



Gordon D. Polozola

² See Carrier Notification SN91082469.

Mr. Gary D. Patterson
September 21, 2004
Page 7

cc: Louisiana Public Service Commission
Mississippi Public Service Commission
Kentucky Public Service Commission
Alabama Public Service Commission